IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Bail Appl..No. 6975 of 2007(S)

CRMP.777/2007 of DISTRICT COURT, KALPETTA
CRIME NO.263 OF 2007 OF S.BATHERY POLICE STATION

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: PETITIONER/ACCUSED

SURESH P.B., S/O.BALAN, 33 YEARS,
MUKKUHIKUNNU P.O., CHEERAL,
S.BATHERY TALUK, WAYANAD.

BY ADV. SRI.RAFFEEKH.K

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
SULTHAN BATHERY, WAYANAD.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6975 of 2007

Dated this the 19th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The crux of the allegations is that the petitioner was engaged in the sale of illicit arrack and was found to be in possession of 2 litres of arrack when the crime was detected by the police on 4/6/2007. Investigation is in progress. The petitioner has not been arrested yet.

2. The learned counsel for the petitioner submits that it is a clear case of mistaken identity. The petitioner was not the person who had allegedly run away from the scene of the crime when the police came to the scene. He is Suresh P.B whereas the accused has been described to be Suresh Babu.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner is unjustifiably attempting to make much out of the innocuous difference in the description of the name. Father's name and other details do tally squarely. Contemporaneous

documents show the complicity of the petitioner. There is absolutely no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007